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Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya

Note verbale dated 18 November 2011 from the Permanent Mission of Australia to the United Nations addressed to the Chair of the Committee

The Permanent Mission of Australia to the United Nations presents its compliments to the Chair of the United Nations Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya. The Permanent Mission of Australia has the honour to enclose the report of Australia to the Security Council pursuant to paragraph 25 of resolution 1970 (2011) (see annex).

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Annex to the note verbale dated 18 November 2011 from the Permanent Mission of Australia to the United Nations addressed to the Chair of the Committee

Report of Australia to the Security Council pursuant to paragraph 25 of Security Council resolution 1970 (2011)

1. Paragraph 25 of resolution 1970 (2011), adopted on 26 February 2011 by the United Nations Security Council,

> *Calls upon* all Member States to report to the C. mittee within 120 days of the adoption of this resolution on the steps they have taken with a view to implementing effectively paragraphs 9, 10, 15 and 17.

2. Paragraphs 9, 10 and 17 of resolution 1970 (2011) are implemented in Australia by the Charter of the United Nations (Sanctions — Libyan Arab Jamahiriya) Regulations 2011 (the Libya Regulations). The Libya Regulations were made pursuant to subsection 6 (1) of the Charter of the United Nations Act 1945 (the Act) and, as such:

- In accordance with section 9 of the Act, the Libya Regulations have effect despite an Act enacted before the commencement of the Libya Regulations; or a law of a State or Territory; or an instrument made under such a law; or any provision of the Corporations Act 2001, or the Australian Securities and Investments Commission Act 2001, or of regulations made under those Acts; or an instrument made under such a provision.
- In accordance with subsection 10 (1) of the Act, no Act enacted at or after the commencement of section 10 of the Act may be interpreted as amending or repealing, or otherwise altering the effect or operation of, a provision of the Libya Regulations; or as authorizing the making of an instrument amending or repealing, or otherwise altering the effect or operation of, a provision of the Libya Regulations.

3. Paragraph 15 of resolution 1970 (2011) is implemented in Australia by the Migration (United Nations Security Council Resolutions) Regulations 2007.

4. References in the present report to "the Committee" are to the Committee established under paragraph 24 of resolution 1970 (2011).

Paragraph 9

5. The Libya Regulations define the items referred to in paragraph 9 ("arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned") as "export sanctioned goods" (regulation 3), and define the direct or indirect supply, sale or transfer to Libya of export sanctioned goods as a "sanctioned supply" (regulation 4). Regulation 6 of the Libya Regulations prohibits the making of a sanctioned supply without the prior authorization of the Minister for Foreign Affairs ("the Minister") in accordance with regulation 7.

6. Regulation 7 of the Libya Regulations provides that the Minister may grant a person a permit authorizing the making of a sanctioned supply in accordance with, and subject to the conditions of, the exceptions set out in paragraph 9 of resolution

1970 (2011). In addition, the Minister may grant a permit to make a sanctioned supply in circumstances to which paragraph 4 of resolution 1973 (2011) applies.

7. Regulation 13CS of the Customs (Prohibited Exports) Regulations 1958 also prohibits the exportation of arms and related materiel, whose immediate or final destination is, or is intended to be, Libya without the prior authorization of the Minister.

8. The Libya Regulations define the conduct referred to in the second part of paragraph 9 of resolution 1970 (2011) (the direct or indirect supply, sale or transfer to Libya of technical assistance, training, financial or other assistance, related to military activities or the provision, maintenance or use of any arms and related materiel, including the provision of armed mercenary personnel) as a "sanctioned service" (regulation 5).

9. Regulation 9 of the Libya Regulations prohibits the provision of a sanctioned service that is either not authorized by the Minister in accordance with regulation 10, or is not provided in relation to a sanctioned supply authorized in accordance with regulation 7. Regulation 10 of the Libya Regulations provides that the Minister may grant a person a permit authorizing the provision of a sanctioned service in accordance with, and subject to the conditions of, the exceptions set out in paragraph 9 of resolution 1970 (2011). In addition, the Minister may grant a permit to provide a sanctioned service in circumstances to which paragraph 4 of resolution 1973 (2011) applies.

Paragraph 10

10. The Libya Regulations define the items described in paragraph 10 (arms or related materiel) as "import sanctioned goods" (regulation 3). Regulation 8 prohibits the procurement of import sanctioned goods from Libya or from a person or entity in Libya.

11. Regulation 4ZB of the Customs (Prohibited Imports) Regulations 1956 also prohibits the importation of arms and related materiel from Libya.

Paragraph 17

12. The Libya Regulations define an asset that is owned or controlled, directly or indirectly by:

(a) A person designated in annex II of resolution 1970 (2011), or annex II of resolution 1973 (2011), or by the Committee or the Security Council for paragraph 17 of resolution 1970 (2011) ("designated person or entity"); or

(b) A person or entity acting on behalf of, or at the direction of, a designated person or entity; or

(c) An entity owned or controlled by a designated person or entity, including through illicit means,

as a "controlled asset".

13. Regulation 12 prohibits a person who holds a controlled asset from using or dealing with it, or allowing it to be used or dealt with, or facilitating the use of it or dealing with it, other than as authorized by a permit under regulation 13. In other words, a person who holds a controlled asset must "freeze" the asset.

14. Regulation 11 of the Libya Regulations prohibits a person, other than as authorized by a permit under regulation 13, from directly or indirectly making any asset available to, or for the benefit of:

- A designated person or entity; or
- A person or entity acting on behalf of, or at the direction of, a designated person or entity; or
- An entity owned or controlled by a designated person or entity, including through illicit means.

15. Regulation 13 provides that the Minister may, on application, grant a person a permit authorizing the making available of an asset to a person or entity that would otherwise contravene regulation 11, or a use of, or dealing with, a controlled asset, as allowed by, and subject to the conditions set out in, paragraphs 19, 20 and 21 of resolution 1970 (2011). The Libya Regulations describe these exceptions as follows:

- A "basic expense dealing", corresponding to paragraph 19 (a) of resolution 1970 (2011)
- An "extraordinary expense dealing", corresponding to paragraph 19 (b) of resolution 1970 (2011)
- A "legally required dealing", corresponding to paragraph 19 (c) of resolution 1970 (2011)
- A "contractual dealing", corresponding to paragraph 20 of resolution 1970 (2011)
- A "required payment dealing", corresponding to paragraph 21 of resolution 1970 (2011).

16. The exceptions for which a permit can be issued are defined in Regulation 5 of the Charter of the United Nations (Dealing with Assets) Regulations 2008.

Enforcement of the Libya Regulations

17. On 10 March 2011, regulations 6, 8, 9, 11 and 12 of the Libya Regulations, as well as regulation 13CS of the Customs (Prohibited Exports) Regulations 1958 and regulation 4ZB of the Customs (Prohibited Imports) Regulations 1956, were specified as "United Nations sanction enforcement laws", in accordance with subsection 2B(1) of the Charter of the United Nations Act 1945 (the Act). Contravention of a United Nations sanction enforcement law, or of a condition of a permit granted under a United Nations sanction enforcement law (such as a permit granted under regulations 7, 10 or 13), is an offence under section 27 of the Act.

18. In terms of the jurisdictional scope of the offence, section 15.1 of the Criminal Code 1995 applies to offences under section 27 of the Act relating to contraventions of regulations 6, 8, 9, 11 and 12. This means it applies to conduct constituting the offence when committed:

- Wholly or partly in Australia, or on board an Australian aircraft or ship
- Wholly outside Australia by an Australian citizen or an Australian body corporate.

19. Regulations 6, 8 and 9 also provide that the offence applies when the conduct constituting the offence was committed by a person, whether or not in Australia and whether or not an Australian citizen, using the services of an Australian ship or an Australian aircraft.

20. Regulations 6, 8 and 9 further provide that an Australian body corporate is liable for conduct contravening the regulation committed by another body corporate or entity, wherever incorporated or situated, if the Australian body corporate has effective control over the actions of that other body corporate or entity.

21. The maximum penalty upon conviction for individuals is 10 years' imprisonment or a fine the greater of A$ 275,000, or three times the value of the transaction (if this can be calculated). For a body corporate, the offence is an offence of strict liability unless it can prove that it took reasonable precautions and exercised due diligence to avoid contravening the regulation. The maximum penalty for bodies corporate upon conviction is a fine the greater of A$ 1.1 million, or three times the value of the transaction (if this can be calculated).

Paragraph 15

22. Paragraph 15 of resolution 1970 (2011) is implemented in Australia by the Migration (United Nations Security Council Resolutions) Regulations 2007 (the Migration (UNSCR) Regulations). The Migration (UNSCR) Regulations provide that a person who is or becomes the subject of specified resolutions of the Security Council that require Australia to prevent that person entering or transiting through Australian territory is unable to be granted a visa or, if a visa has already been granted, may have his or her visa cancelled, consistent with the obligations in the relevant Security Council resolution.

23. The Department of Immigration and Citizenship maintains a Movement Alert List, which includes the names of non-citizens whose eligibility for a visa grant or continuing eligibility to hold a visa may be an issue. All persons listed in annex I of resolution 1970 (2011) and annex I of resolution 1973 (2011) are included on the Movement Alert List. The names of all visa applicants are checked against the Movement Alert List prior to any decision to grant a visa to enter Australia. The Movement Alert List is electronically accessible to officers of the Department of Immigration and Citizenship posted to Australia's diplomatic and consular missions worldwide, although the matching process has been centralized in the Border Operations Centre in the Department of Immigration and Citizenship's National Office. Additional checks are also undertaken at Australian entry points to ensure that any person put on the Movement Alert List subsequent to a visa grant is identified.

24. Where there may be a potential match between a visa applicant and an individual listed on the Movement Alert List, further enquires must be made before a visa can be granted, or, if it has already been granted, to consider whether it can or must be cancelled. Led by the Department of Immigration and Citizenship, this is a consultative process including many Government bodies, which aims to resolve the Movement Alert List alert by examining available data on both applicants and individuals on the List.